



SEPTEMBER 15, 2008

ADVISORY OPINION 08-0X

Interpretation of T.C.A. § 3-6-304 with respect to whether a lobbyist may be involved in fundraising activities for the campaigns of state officials.

INTRODUCTION

The following Advisory Opinion is in response to a request from Mr. Joshua Rosenstein, Associate General Counsel of Dutko Worldwide (“Dutko”), on behalf of Ms. Leigh Szubrowski, a registered lobbyist with regard to whether certain funding raising activities on behalf of covered officials¹ (“Officials”) would violate the Ethics Reform Act (“Act”).

QUESTION

1. May a lobbyist attend fundraising events for state officials with her clients and ask or otherwise encourage clients to donate money to the Officials’ campaigns? For example, is a lobbyist in violation of the Act if a lobbyist attends a fundraiser for an Official, commits to raising a set amount of money, and facilitates clients’ and/or colleagues’ donations to the campaign, but does not directly donate to the campaign?
2. May a lobbyist participate in organizing, arranging and attending fundraisers if she does not give a direct monetary contribution to the Official’s campaign?
 - a. May she assist in selecting the venue, catering and guest list, invite third parties, and attend the event?
 - b. Does it make a difference if she is arranging the fundraiser at the request or on behalf of a client or if she were to perform these activities in her capacity as a private citizen?
3. May a lobbyist make or otherwise facilitate contributions that will be attributed to an Official but not directly benefit that Official? For example, if the Governor is a member of the Democratic Governors’ Association (“DGA”) and the Governor, as part of his membership, is provided a fundraising quota to raise for the DGA, may a lobbyist attend a DGA event and make a donation directly to the DGA knowing that donation would be applied to the Governor’s quota?
 - a. May the lobbyist attend the event and facilitate the donations by other parties?

¹ Covered officials are the Governor, state senators, state representatives and any candidates for those positions. See Tenn. Code Ann. § 3-6-304(j).

TENNESSEE ETHICS COMMISSION

ADVISORY OPINION 08-XX

Page 2 of 5

- b. Does it make a difference if the lobbyist attends with her clients or is there on behalf of her clients as opposed to her attendance and participation as a private citizen?

ANSWER

1. Yes. The Act does not prohibit a lobbyist from attending a fundraising event. Moreover, the Act does not prohibit a lobbyist from encouraging clients to make certain campaign contributions, provided the client is not subject to other campaign contribution restrictions. However, a lobbyist may not commit herself to raising a set amount of money for an Official.
2. Yes. The Act does not prohibit a lobbyist from organizing, arranging, and attending fundraisers as long as the services provided by the lobbyist would fall outside of the definition of a campaign contribution under T.C.A. § 2-10-102(4); i.e., the lobbyist may only assist in the organizing and arranging of the fundraiser by providing “services, including expenses provided without compensation.”
 - a. Yes. The Act does not prohibit the lobbyist from assisting in the selection of venue, caterer, and guest list, as long as she is not compensated for her services. In addition, the lobbyist may be subject to the reporting requirements of T.C.A. § 3-6-305(a)(12)(c) if a legislative or executive branch official attends and accepts a gift, such as food and refreshments, and if the lobbyist also attends the event and knows or has reason to know that the gift has been provided at the suggestion or direction of the lobbyist.
 - b. It is of no consequence whether the lobbyist is arranging the fundraiser on behalf or at the request of her clients or whether she is performing the activities in her private capacity. The Act simply prohibits the lobbyist from being compensated for her services.
3. No. The Act prohibits a lobbyist from making contributions that will be attributed to an Official. The Act prohibits campaign contributions “on behalf of” an Official.
 - a. Yes. The Act does not prohibit the lobbyist from attending the DGA event and facilitating the donations of others provided that she, herself, has not committed to a fundraising quota on behalf of the official.
 - b. It is of no consequence whether the lobbyist attends with her clients, is present on behalf of her clients, or whether she is performing the activities as a private citizen.

ANALYSIS

Tenn.Code Ann. § 3-6-305(a)(1) provides that no employer of a lobbyist or lobbyist may provide a gift, directly or indirectly, to a candidate for public office, official in the legislative branch, official in the executive branch, or immediate family of such candidate or official.

TENNESSEE ETHICS COMMISSION

ADVISORY OPINION 08-XX

Page 3 of 5

However, the Act's definition of "gift" does not include a campaign contribution otherwise reported as required by law.²

Tenn.Code Ann. § 3-6-301(5) defines "campaign contribution" as "any contribution as defined by § 2-10-102(4)." T.C.A. § 2-10-102(4) defines "contribution" as follows:

"Contribution" means any advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, personal funds of a candidate, payment, gift, or subscription of money or like thing of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, made for the purpose of influencing a measure or nomination for election or the election of any person for public office or for the purpose of defraying any expenses of an officeholder incurred in connection with the performance of the officeholder's duties, responsibilities, or constituent services. "Contribution" shall not be construed to include the following:

- A. Services, including expenses provided without compensation by a candidate or individuals volunteering a portion or all of their time, on behalf of a candidate or campaign committee;

. . . .

- E. The use of real or personal property and the cost of invitations, food and beverages not exceeding one hundred dollars (\$100), voluntarily provided on an individual's residential premises for candidate related activities;

Tenn.Code Ann. § 3-6-304(j) provides that "[n]o lobbyist shall offer or make any campaign contribution, including any in-kind contribution, to or on behalf of the governor or any member of the general assembly or any candidate for the office of governor, state senator or state representative." Accordingly, lobbyists are prohibited from offering or making campaign contributions at any time, to or on behalf of members of the General Assembly who are running for reelection to the General Assembly, and to candidates for the General Assembly.

In Advisory Opinion No. 07-03, the Commission held that when a person is both a lobbyist and the treasurer of a multicandidate political action committee ("PAC"), Tenn.Code Ann. § 3-6-304(j) does not prohibit the person from making campaign contributions, as long as the contributions are made while that person is acting in her capacity as a PAC treasurer and not as a lobbyist. The rationale behind this decision was that when the person is acting as the PAC treasurer, the person is not a lobbyist. In the instant matter, there is no suggestion that the lobbyist is acting as a treasurer or similar officer of a PAC. As the Commission stated in Advisory Opinion No. 07-03, "the prohibition in T.C.A. § 3-6-304(j) applies to lobbyists in their individual capacities."

Thus, while lobbyists may not provide gifts to Officials unless the gift falls under one of the Act's exceptions, campaign contributions are not gifts as defined by the Act. Further, campaign contributions do not include services provided without compensation and a one

² T.C.A. § 3-6-301(11).

TENNESSEE ETHICS COMMISSION

ADVISORY OPINION 08-XX

Page 4 of 5

hundred dollar (\$100.00) carve out for expenses relating to the use of the lobbyist's residence for candidate related activities.³

Question (1)

The Act does not prohibit a lobbyist from attending a campaign fundraiser. Tenn.Code Ann. § 3-6-304(j) does prohibit the lobbyist from offering or making a campaign contribution to Officials at any time.

The more difficult issue is whether a lobbyist can pledge to raise a certain amount of campaign funds for a specific Official where the lobbyist is not making a personal contribution. There is a subtle distinction between a lobbyist asking others to contribute to the Official, which is not prohibited, and a lobbyist pledging to raise a certain amount for the Official because the latter implicates the Act's prohibition on a lobbyist from offering to make a campaign contribution.

A pledge to raise a certain amount of money is an offer. Black's Law Dictionary defines "pledge" as "[a] formal promise or undertaking." Similarly, Black's Law Dictionary defines "offer" as "[a] promise to do or refrain from doing some specified thing in the future ..."⁴ Given the plain words of the statute, the Commission concludes that a pledge to raise funds for a specific Official would fall under the Act's prohibition that a lobbyist may not offer a campaign contribution to an Official.

Question (2)

In Advisory Opinion No. 07-12, the Commission discussed in-kind contributions and provided the following:

Clearly, an in-kind contribution is a type of campaign contribution under T.C.A. §§ 2-10-102(4) and 3-6-301(5). Therefore, by prohibiting "campaign contributions" at T.C.A. § 3-6-304(j) and (i), the Act prohibits in-kind campaign contributions.

. . . .

Despite the broad statutory prohibition against contributions by lobbyists, they are permitted to make a very limited form of contribution (in the generic sense of the word).

First, a lobbyist may volunteer his or her services in support of a member of, or candidate for, the General Assembly. If all monetary or in-kind contributions are provided by a different source that is permitted to provide those monetary or in-kind contributions, a lobbyist may volunteer his or her services as a host of a fundraiser.

³ Tenn. Code Ann. § 2-10-102(4)(A) and (E).

⁴ *Black's Law Dictionary*, (8th ed. 2004).

TENNESSEE ETHICS COMMISSION

ADVISORY OPINION 08-XX

Page 5 of 5

As an example, a lobbyist may help tend bar or prepare food for a fundraiser. Such services would be volunteer services, which are outside the definition of a “contribution.” However, a lobbyist is not permitted to pay for a bartender or caterer, as that would be a prohibited in-kind contribution.

Second, a lobbyist may provide the use of his or her home for holding a fundraiser. The lobbyist is also permitted to provide invitations, food and beverages for such an event, of a value not exceeding \$100.00.

Under the limited exception, a lobbyist may volunteer her services and arrange for the venue, catering, and guest lists. It is of no consequence whether the lobbyist is performing these activities at the request of or on behalf of a client or as a private individual. The issue is whether the lobbyist is being compensated for her services.

There is one caveat. The exception contained in the statute covers campaign contributions but gifts, as defined above, remain prohibited unless there is an exception in the statute. Thus, the lobbyist may be subject to the reporting requirements of T.C.A. § 3-6-305(a)(12)(c) if an official in the legislative or executive branch attends and accepts a gift, such as food and refreshments at a fundraising event, and if the lobbyist also attends the event and knows or has reason to know that the gift has been provided at the suggestion or direction of the lobbyist.

Question (3)

As stated above, the Act does not prohibit a lobbyist from attending the fundraiser or from asking others to contribute to the DGA. The remaining issue concerns the lobbyist making contributions to the DGA which would not go directly to the Governor, but would instead be allotted to the Governor’s fundraising quota.

The Act prohibits a lobbyist from making campaign contribution to or “on behalf of” an Official. Although the lobbyist has inquired about making a contribution to the DGA, it is clear that the contribution would be applied to the Governor’s fundraising quota to the DGA. The contribution would thus be a contribution on behalf of the Governor. Pursuant to Tenn.Code Ann. § 3-6-304(j), the lobbyist is prohibited from making this contribution.

Donald J. Hall, Chair
R. Larry Brown
Dianne Ferrell Neal
Thomas J. Garland
Linda Whitlow Knight, Esq.
Benjamin S. Purser, Jr.,
Commissioners

Adopted: XXXXXXXXXXXXXXXXXXXXXXXXXX.